IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2590 OF 2007

Chandrabhagha W/o Sadashiv Kenjale ...Petitioner

vs.

Narayan Nivrutti Roman ...Respondent

Mr.Sughandh Deshmukh for the Petitioner
Mr.Uday Warunjikar for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Rule. The Advocate for the Respondent waives service. Taken up for hearing forthwith.

2. The Respondent-Plaintiff had made an application for temporary injunction in a civil suit filed by him which was rejected on 24th August 2005. The Respondent-Plaintiff preferred an Appeal under Order XLIII Rule 1 (r) of the Code of Civil Procedure,1908 for challenging the order dismissing his application. By the impugned order dated 8th January 2007, the learned Additional District Judge, Solapur allowed the Appeal.

3. I have heard the submissions of the learned Advocates for the parties. I have perused the impugned order. Perusal of the impugned order shows that in paragraph 7, the learned Judge has referred to pending civil suits between the parties. The learned Judge proceeded to observe that the Trial Court

has not seen the legal ownership and without considering the legal ownership, the impugned order has been passed. The learned Judge has also observed that the provisions of Order XXIII of the said Code have not been considered by the trial Court. After making these observations, the learned Judge has referred to certain decisions relied upon by the Advocates for the parties. After referring to the reported Judgments, the learned Judge has recorded a finding that there is a prima facie case. He observed that the balance of convenience is in favour of the Respondent and an irreparable loss may be caused to the Respondent.

4. There are no prima facie findings recorded by the Appellate Court on the contentions raised by the parties. There are no reasons assigned for setting aside the order passed by the Trial Court. The Appeal preferred by the Respondent has been allowed by the Appellate Court by passing a very cryptic order. The Judgment of Appelalte Court is most unsatisfactory. Therefore, the order deserves to be quashed and set aside with a direction to decide the same afresh. It will have to be observed that the Appellate Court has not performed its duty.

5. Hence, I pass the following order :

i) Impugned Judgment and Order dated 8th January 2007 is

quashed and set aside and Misc.Civil Appeal No.158 of 2005 is restored to the file.

ii) Parties are directed to appear before the learned Principal District Judge, Satara on 30th July 2007 at 11.00 a.m. for fixing the schedule of the hearing of the Appeal. The learned Principal District Judge may himself hear the Appeal or may assign it to any other Judge considering the administrative convenience.

iii) The Appeal shall be decided as expeditiously as possible and preferably on or before 31st December 2007.

iv) If any interim relief is granted during the pendency of the Appeal, the same will continue to operate till the final disposal of the Appeal.

v) All contentions of the parties in the pending Appeal on merits are expressly kept open.

vi) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE